IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 157 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

PUNA HIRJI

Appearance:

MS GAJJAR, AGP, for Petitioners

MR DAHYABHAI M PATEL for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/03/2001

ORAL JUDGEMENT

1. This second appeal arises out of a judgment and decree passed in Regular Civil Appeal No.24 of 1983 by the learned Assistant Judge, Amreli on the 11th November, 1983. The said Regular Civil Appeal arose out of a

judgment and decree passed in Regular Civil Suit No.189 of 1981 by learned Civil Judge (S.D.), Amreli, on the 8th December, 1982.

2. The said suit was filed by present respondent-Puna Hirji against the State of Gujarat and the Special Secretary, Revenue, Ahmedabad. According to the plaintiff, he owned a house situate in Gajarapara in Amreli city within the local municipal limits. He had purchased a plot and after obtaining necessary permission from the Municipality, constructed a house thereon and the Municipality used to collect taxes from the plaintiff in respect of the said property. The Collector, Amreli, however, passed an order regularising the construction of the plaintiff by recovering Rs.3596.98 ps. comprising of composition fee, penalty, etc. by order dated the 12th June, 1978 bearing No.N.A./Amreli Case No.297/532/1246. Aggrieved by the said order, the plaintiff preferred an appeal before the Special Secretary, Revenue Department, which came to be rejected. The plaintiff, therefore, preferred the suit to challenge the action of imposing composition fee, N.A. assessment amount and penalty by the Collector for the land located within the municipal limits and converted to non-agricultural use before the 31st July, 1957. A relief was sought to declare the order of the Collector dated the 12th June, 1978 and the 11th May, 1978 as illegal, void and without authority. An injunction was also sought against the defendants restraining them from implementing the said orders.

3. The defendants resisted the suit by filing written statement contending, inter alia, that the plaintiff was required to obtain permission from the Revenue Department although he had obtained a permission from the Municipality. The Collector has, by order, regularised the construction by recovering Rs.132.78 ps. as N.A. assessment amount from 1.8.1949 to 31.7.1973; Rs.1164/- as penalty and Rs.2500/- as composition fee. The revision preferred by the plaintiff before the Special Secretary has already been rejected. That the suit is time barred; that the Court had no jurisdiction to hear the suit and, therefore, ultimately, prayed that the suit may be dismissed. Issues were framed by the learned Trial Judge. The plaintiff, however, pressed the challenge only to imposition of composition fee and waived the other reliefs regarding penalty, etc. The learned Trial Judge, after considering the case as advanced by both the sides, partly allowed the suit and declared that the defendants were not entitled to recover composition fee from the plaintiff. It was also held that the defendants are entitled to recover N.A.

assessment and penalty from the plaintiff and passed orders permanently restraining the defendants from recovering composition fee from the plaintiff.

3.1 Aggrieved by the said judgment and decree, the defendants approached the District Court with an appeal, which was numbered as Regular Civil Appeal No.24 of 1983, raising number of contentions. The learned Assistant Judge, Amreli, after hearing the rival side cases and considering the merits, dismissed the appeal. This has given rise to the present appeal.

4. Both the Courts below have observed that the composition fee was imposed in absence of any specific provision authorising imposition of such fees and, therefore, it was without authority and jurisdiction and could not have been levied by the Collector. It has been observed by the Trial Court in its judgment that, although the plaintiff had agreed to pay requisite fees/compositions fees, it should not have been levied as there is no provision either in any law or in any rules to impose such composition fees. Though the plaintiff gave undertaking to pay the charges imposed by the Collector, the defendant could not have imposed such charges which are otherwise not leviable. The principle of estoppel cannot operate against imposition of such illegal charges. As regards the suit being time barred, it was observed that the notice to the Mamlatdar was issued and, thereafter, within three years' time, the suit was filed by the plaintiff and, therefore, it was observed that the suit was not time barred.

4.1 The First Appellate Court in its judgment observed that, admittedly, the plaintiff had constructed the superstructure over the plot without taking permission from the Collector. It was observed that, obviously, the plaintiff had not taken the permission for the said construction over the plot from the Collector. It was urged before the First Appellate Court on behalf of the appellants that respondent had given the undertaking to pay the composition fee and, therefore, he was estopped from taking the defence that the said order is illegal by virtue of operation of Section 115 of the Evidence Act. The First Appellate Court observed that no such plea of estoppel could have been raised against the provision of law. The Court also observed that there is no provision of law authorising imposition of composition fee by the Collector for such unauthorised construction. Before the First Appellate Court, the learned Government Pleader failed to show any right to recover the composition fee for such regularising. Relying on

decision in the case of Ambaben Bavabhai Jadav v. Ramsubarao and Another, 20 GLR 766, the First Appellate Court dismissed the appeal.

5. Ms. Gajjar, learned Assistant Government Pleader appearing for the appellants (original defendants), has submitted that the composition fee was imposed in light of certain resolutions, circulars and guidelines issued by the Government and, therefore, the Courts ought not to have decreed the suit.

5.1 She submitted that when the plaintiff had expressed his readiness to pay requisite charges, he could not have agitated the question of composition fee. She submitted that the plaintiff has clearly undertaken to pay the composition fee and, therefore, the Courts below ran into an error in not accepting this stand of the appellants-original defendants.

6. Having regard to the contentions raised in the appeal, Court has formulated the following three questions :-

"(1) Whether the lower courts were right in law in coming to the conclusion that the order in respect of the recovery of composition fees, is legal and valid.

(2) Whether the lower courts were right in coming to the conclusion that when the plaintiff gave an undertaking to the Collector to pay the composition fees for the regularisation of the said construction over the plot, is he entitled to raise the plea that the order regarding composition fees is illegal and invalid in view of the principles of estoppel.

(3) Whether the lower courts were right in coming to the conclusion that the suit filed by the plaintiff is proper without notice under section 80 of the C.P.C."

7. Having regard to the contentions raised by learned Assistant Government Pleader, at the outset, it may be noted that this Court has been taken through the record and proceedings of the Trial Court. She could not point out any material on record to indicate any guideline, circular or resolution authorising imposition of composition fee. When pointedly asked, she could not indicate any provision either in any Act or any Rule authorising imposition of composition fee. Both the

Courts below, therefore, were right in observing that the defendants (present appellants) had no authority of law to impose composition fee. There is nothing on record to indicate as to what is meant by composition fee nor is there anything to indicate how it is required to be computed and how, in fact, it was computed in the facts of the present case. It is true that the plaintiff had, while applying for regularisation, agreed to pay composition fee, but if that application is perused, it is found that the application is tendered in a cyclostyled form which contains this clause. In the opinion of this Court, in the facts of this case, when the appellant-authorities are not able to indicate as to what is meant by composition fee, as to how it is required to be computed and in exercise of which authority or provision of law it is imposed, no error can be said to have been committed by the Courts below and no interference is called for by this Court in this second appeal. It would also be worthwhile to note that in a similar case which arose in the case of Ambaben Bavabhai Jadav (supra), this Court observed as under :-

> "Neither in the notice nor in the order, it is set out as to what the Ribbon Development Rules are, of which year they are, they are issued by whom and under what authority, and under what provision of law or under what authority of law the Collector had called upon her to pay up 50% of the cost of construction. It is high time that all the public functionaries including the Collectors and Special Secretaries note that they, as public authorities, have got only those powers which are conferred on them by law. Whenever they try to deprive a citizen of his money or property, they must be clear in their conception as to under what provision of law citizens are liable to be deprived of the money or property. In other words, a public officer must be liable to point his finger to some specific provisions of law or rules or authority under the law. They must specify the Ribbon Development Rules or which year they are, and what specific provision of those Ribbon Development Rules is violated."

8. Ms. Gajjar, learned Assistant Government Pleader, appearing for the appellants, has shown to this Court some of the G.Rs. and circulars in respect of which reference is made in the appeal. But she could not point

out any provision of law as a source of authority to impose such fees and this Court, in the facts of the case, is, therefore, not in a position to hold that the Courts below have committed any error.

9. Under the circumstances, in the facts of this case, the imposition of composition fee by the Collector for regularising the construction was not legal. As such, the Courts below cannot be said to have committed any error in decreeing the suit. The questions formulated while admitting the appeal are, accordingly, answered in the negative. The appeal is dismissed. No orders as to costs.

[A.L. DAVE, J.]
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STARTORDER
SA15884J

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 158 of 1984

For Approval and Signature:

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STATE OF GUJARAT

Versus

PATEL NANJI JINA

Appearance:

MS GAJJAR, AGP, for the appellant.

MR GOHIL for the Respondent.

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/03/2001

ORAL JUDGEMENT

1. This Second Appeal raises following questions of law :-

"(1) Whether in the facts and circumstances of the case, the Courts below have erred in holding that the order of the Collector to recover composition fees was illegal and void.

(2) Whether in the facts and circumstances of the case, the Courts below have erred in holding that the suit was not time barred.

(3) Whether in the facts and circumstances of the case, the Courts below have erred in holding that the suit is not barred by Revenue Jurisdiction Act."

2. The State of Gujarat is aggrieved by judgment and decree passed in Regular Civil Appeal No.142 of 1981 by the learned Assistant Judge Amreli. The said appeal arose out of a judgment and decree passed in Regular Civil Suit No.79 of 1979 before Civil Judge (S.D.), at Amreli.

3. The suit was preferred by present respondent against the Government to challenge imposition of composition fee while regularising some illegal construction over marginal land of plots No.180, 181 and 182 of Revenue Survey No.536 of Amreli. The Collector, Amreli, while regularising the construction, imposed composition at the rate of 50% of the cost of construction computed at Rs.7250/-, besides a fine at the rate of 40% of the assessment of Rs.840/-. The plaintiff challenged the authority of the Collector to impose such

composition fee and legality of such imposition. The Trial Court, after considering the rival side contentions and evidence led by the parties, decreed the suit in part and declared that the order dated 8.7.1973 passed by the Collector, Amreli, imposing 50% composition fee amounting to Rs.7250/- as illegal, void and without jurisdiction. The rest of the order imposing find was held to be legal and valid. The said order was challenged before the District Court, Amreli, in Regular Civil Appeal No.142 of 1981 by the State of Gujarat. The learned Assistant Judge, Amreli, by judgment dated the 11th November, 1983, dismissed the appeal after considering the contentions raised before him. Aggrieved by the said judgment and order, present Second Appeal is preferred by the State of Gujarat. This Court, while admitting the appeal, has formulated the questions as stated above.

4. Heard Ms. Gajjar, learned Assistant Government Pleader for the appellant and Mr. Gohil, learned advocate for the respondent.

5. According to Ms. Gajjar, the composition fee was imposed by the Collector in light of certain resoutions/circulars and guidelines issued by the Government and, therefore, the suit in this regard also ought to have been dismissed. She further submitted that the plaintiff had expressed his readiness to pay requisite charges and, therefore, he could not have agitated the imposition of composition fee. She submitted, therefore, that both the Courts below have committed an error in not accepting the case of the appellant.

6. Mr. Gohil, learned advocate for the respondent, submitted that both the Courts below have given concurrent findings. The questions formulated by this Court are more or less questions based of facts. He submitted that nothing was indicated either before the Trial Court or before the Lower Appellate Court to authorise the Collector to impose composition fee. Some undertaking by the party cannot legalise illegal act of the Collector. He submitted that the appeal may, therefore, be dismissed.

7. On going through the record and proceedings of the Trial Court, it is found that both the Courts below have observed that composition fee was imposed in absence of any specific provision authorising imposition of such fees and, therefore, it was without authority and jurisdiction and the Collector could not have levied the same. The Court below observed that although the

plaintiff had agreed to pay requisite fees, it should not have been levied in absence of any provision authorising such levy either by law or under any rules. The Collector could not have imposed such charges which are otherwise not leviable. The Courts observed that principle of estoppel cannot operate in favour imposition of such illegal charges. As regards the question of limitation, it was observed that notice to the Mamlatdar was given and, thereafter, within three years' time, the suit has been filed by the plaintiff and, therefore, the suit cannot be said to have been time barred.

8. The Lower Appellate Court observed that the plaintiff had, admittedly, constructed the superstructure over the plot without taking permission from the Collector. It was further observed that plea of estoppel could not have been raised against the plaintiff-respondent in face of the fact that there was no provision of law authorising imposition of composition fee.

9. Having regard to the contentions raised by learned Assistant Government Pleader, at the outset, it may be noted that this Court has been taken through the record and proceedings of the Trial Court. She could not point out any material on record to indicate any guideline, circular or resolution authorising imposition of composition fee. When pointedly asked, she could not indicate any provision either in any Act or any Rule authorising imposition of composition fee. Both the Courts below, therefore, were right in observing that the defendants (present appellants) had no authority of law to impose composition fee. There is nothing on record to indicate as to what is meant by composition fee nor is there anything to indicate how it is required to be computed and how, in fact, it was computed in the facts of the present case. It is true that the plaintiff had, while applying for regularisation, agreed to pay composition fee, but if that application is perused, it is found that the application is tendered in a cyclostyled form which contains this clause. In the opinion of this Court, in the facts of this case, when the appellant-authorities are not able to indicate as to what is meant by composition fee, as to how it is required to be computed and in exercise of which authority or provision of law it is imposed, no error can be said to have been committed by the Courts below and no interference is called for by this Court in this second appeal. It would also be worthwhile to note that in a similar case which arose in the case of Ambaben Bavabhai Jadav (supra), this Court observed as under :-

"Neither in the notice nor in the order, it is set out as to what the Ribbon Development Rules are, of which year they are, they are issued by whom and under what authority, and under what provision of law or under what authority of law the Collector had called upon her to pay up 50% of the cost of construction. It is high time that all the public functionaries including the Collectors and Special Secretaries note that they, as public authorities, have got only those powers which are conferred on them by law. Whenever they try to deprive a citizen of his money or property, they must be clear in their conception as to under what provision of law citizens are liable to be deprived of the money or property. In other words, a public officer must be liable to point his finger to some specific provisions of law or rules or authority under the law. They must specify the Ribbon Development Rules or which year they are, and what specific provision of those Ribbon Development Rules is violated."

10. Ms. Gajjar, learned Assistant Government Pleader, appearing for the appellants, has shown to this Court some of the G.Rs. and circulars in respect of which reference is made in the appeal. But she could not point out any provision of law as a source of authority to impose such fees and this Court, in the facts of the case, is, therefore, not in a position to hold that the Courts below have committed any error.

11. Under the circumstances, in the facts of this case, the imposition of composition fee by the Collector for regularising the construction was not legal. As such, the Courts below cannot be said to have committed any error in decreeing the suit. The questions formulated while admitting the appeal are, accordingly, answered in the negative. The appeal is dismissed. No orders as to costs.

[A.L. DAVE, J.]
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